

Sewer Service

Alive and Well in Minnesota

By Scott Gray

For anyone reading my articles over the last couple of years, it has likely become apparent that – from the perspective of a true professional process server – the actions, practices and behavior of certain players in the process service industry in Minnesota are a risk to the legal community in general and to the reputation and livelihood of those organizations that operate with integrity and honesty.

Under Minnesota rules, any person over the age 18 and not a party to the action may make service of a summons or other process. There are no requirements for training; no requirements for licensing; no requirements for insurance or bonding; and no regulation or government oversight. This has resulted in a Wild West mentality and practice by certain players in our industry in Minnesota.

Some years back, a Twin Cities process server company was charged with numerous crimes related to fraudulent service which insiders refer to as sewer or gutter service wherein a process server claims to have made service upon a defendant when in fact service never occurred. The fallout from the scandal resulted in the company in question going out of business. This should've been the proper conclusion – the bad actor disappears. Oops, not so fast! Within weeks, the owner of that company re-emerged in the market with a new company name, a new website and a new opportunity.

This November, Minnesota Attorney General Lori Swanson filed a lawsuit against another Minnesota process service company alleging the exact same circumstances of sewer service. The owner of the company even admitted to allegations in a deposition he gave. Once again, the same set of circumstances lead to another black mark for our industry; a pile of fraudulent judgments causing harm to unaware parties; and attorneys and creditors scrambling to reverse the damage done by relying on a crooked process server.

What causes this behavior or practice? It's quite simple, money.

In order to cut costs and enhance profitability, the vast majority of process service companies in Minnesota – and the United States as a whole – use independent contractors to serve their process rather than employees. These independent contractors are generally compensated only when they complete service upon a defendant. The more attempts they have to make to serve someone, the less money they make.

Since the most common type of process served is a complaint for damages related to credit card debt and the bulk of these lawsuits result in a default judgment with no defense offered by the debtor, the independent contractor process server recognizes that

his or her compensation can be easily enhanced by claiming service was completed and throwing the papers away.

Interestingly in the current case, Swanson's complaint points to the process service company's website, which states it does not farm out services but effectuates service through experienced employees. This claim is simply false as is reflected in deposition testimony.

A simple remedy to eliminate this problem is some form of licensing, regulations or government/judicial oversight. Efforts on our part a few years back to propel a move in that direction, which was supported by the attorney general, found little traction with the legislature as the industry overall is fairly small relative to most regulated activities.

Since it is unlikely that licensure or regulation will become a reality, I once again feel the need to urge attorneys who use private process service companies to do their due diligence. It is critical to evaluate the validity of someone's claim to be a professional process server.

Here are some questions to investigate:

- Is your process server insured?
- Do they use actual employees or independent contractors?
- Are their independent contractors insured?
- Do they use pre-signed blank form affidavits?
- Do they have an office or do they work out of their vehicle?
- Do they background check their servers?

Service is a small part of the civil judicial system but critical in providing proper notice and conferring jurisdiction. Don't find out too late that your server is compromising your practice.

Scott Gray is the vice president and operations manager for Metro Legal Services with over 30 years of process service experience. Metro Legal Services, in its 43rd year of operation, is the leader in the upper Midwest in providing ancillary services to the legal community. Questions/comments welcome at (612) 349-9512, or visit www.metrolegal.com.

